

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Sohrab Amirghodsi	Art Unit :	2624
Patent No. :	7,437,018	Examiner :	Randolph I. Chu
Issue Date :	October 14, 2008	Conf. No. :	9827
Serial No. :	10/714,514		
Filed :	November 14, 2003		
Title :	IMAGE RESAMPLING USING VARIABLE QUANTIZATION BINS		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed September 24, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 762 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 795 days to 1369 days, and to increase Total PTA from 762 to 1336 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) The PTO mailed a delayed 14-month first non-final Office Action on March 20, 2007, thereby according a PTO Delay of 795 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 2) Applicant filed a Notice of Appeal on January 7, 2008 (received at the PTO on January 7, 2008). Applicant was accorded a delay of 33 days for a late response to the final Office Action. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 3) The application was filed on November 14, 2003 and the patent issued on October 14, 2008, more than three years later. No PTO Delay was calculated for issuance

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the United States Patent and Trademark Office using the EFS -WEB system on this date: November 24, 2008

of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 574 days, as outlined further below. The PTO Delay of 795 days ("A Delay") includes 126 days after three years from filing where "A" and "B" delays overlap. Therefore, the "B Delay" of 574 days does not include the overlapping 126 days.

### REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can "overlap" is if they occur on the same day, and if an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. "A Delays" are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years," and that "B delay" begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of "A Delay" or "B Delay," rather than the combined sum of "A Delay" and "B Delay" (which does not include any days after three years from filing where "A" and "B" delays overlap).

In this patent, "A Delay" should be calculated as 795 days, and "B Delay" should be calculated as 574 days. Thus, the total PTO Delay should be calculated as 1369 days.

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In consideration of the events described above, Applicant believes the PTA calculation of 762 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

- 1) Total PTO Delay should be calculated as 1369 days;
- 2) Total Applicant Delay should be calculated as 33 days; and
- 3) Total PTA should be calculated as 1336 days.

Applicant notes that this patent is not subject to a terminal disclaimer.

Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 24, 2008

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